

INSTRUCTIONS FOR VACATING MISDEMEANOR AND GROSS MISDEMEANOR CONVICTIONS

Washington law permits the vacation of some misdemeanor or gross misdemeanor convictions.

Vacation of a conviction releases you from all penalties and disabilities resulting from the offense. Once a conviction is vacated, the fact that you have been convicted of the offense shall not be included in your criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated may state that he or she has never been convicted of that crime. Vacation of a conviction, however, does not affect or prevent use of the conviction in a later criminal prosecution. Vacation of a conviction does not automatically restore your right to possess a firearm.

The law does not automatically vacate your conviction. If you want to have a conviction vacated, you must file a motion with the court. The following information will assist you in deciding whether the law applies to your situation and, if so, how to ask the court to vacate your conviction.

If you meet the following criteria, a court may, in its discretion, vacate the conviction.

- ❖ There are no criminal charges pending against you in any court of this state or another state, or in any federal court.
- ❖ You have not been convicted of a new crime in this state, another state, or federal court since the date you were sentenced on the crime you wish to have vacated.
- ❖ You have never had the record of another conviction vacated.
- ❖ You are not currently restrained, and have not been restrained within five years prior to the vacation application, by a domestic violence protection order, a no-contact order, an antiharassment protection order, or a civil restraining order which restrains one party from contacting the other party.
- ❖ The conviction you are seeking to have vacated is **not** for one of the following crimes:

A prostitution offense that you committed as a result of being a victim of trafficking under RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. § 7101 et seq. If it is, skip to the symbol “➤,” below.

Driving while under the influence (“DUI”), RCW 46.61.502
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Actual physical control while under the influence, RCW 46.61.504
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Operating a railroad, etc., while intoxicated, RCW 9.91.020

An offense considered a “prior offense” under RCW 46.61.5055 and you have had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense.

A “prior offense” means:

- Vehicular Homicide while under the influence of intoxicating liquor or any drug. (RCW 46.61.520)
- Vehicular Assault while under the influence of intoxicating liquor or any drug. (RCW 46.61.522).
- Vehicular Homicide or Vehicular Assault committed in a reckless manner or with disregard for the safety of others if the original charge was for Vehicular Homicide or Vehicular Assault while under the influence of intoxicating liquor or any drug.
- Negligent Driving in the 1st degree (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), Reckless Endangerment (RCW 9A.36.050) or equivalent out of state or local ordinance, if the original charge was, DUI, Actual physical control while under the influence, vehicular homicide or vehicular assault.
- Deferred prosecution for DUI/Physical control or equivalent local ordinance.
- Deferred prosecution for Negligent Driving in the 1st degree if the original charge was DUI, Actual physical control, vehicular homicide, vehicular assault;
- (Effective August 1, 2012) An equivalent out-of-state deferred prosecution for DUI/Physical control, including chemical dependency treatment program.

A violation of chapter 9A.44 RCW (sex offenses)

A violation of chapter 9.68 RCW (obscenity and pornography)

A violation of chapter 9.68A RCW (sexual exploitation of children)

A violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense

- ❖ If the crime you are seeking to have vacated involved domestic violence, you must:
 - ❖ Provide the prosecuting attorney’s office that prosecuted you with timely notice of your motion and declaration for order vacating conviction and file the original notice with the court.
 - ❖ You must not have been convicted of any other domestic violence offense arising out of any other incident. (If the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction.)
 - ❖ Five years have elapsed since you completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing.
- ❖ If the crime you are seeking to have vacated did not involve domestic violence, three years must have elapsed since you completed the terms of the original conditions of the sentence, including any financial obligations.
- The conviction was for a prostitution offense that was committed while you were a victim of trafficking under state or federal law, of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor:
 - ❖ If the crime you are seeking to have vacated is a prostitution offense that you committed as a result of being a victim of:

- ❖ trafficking, RCW 9A.40.100,
- ❖ promoting prostitution in the first degree, RCW 9A.88.070,
- ❖ promoting commercial sexual abuse of a minor, RCW 9.68A.101, or
- ❖ trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. §7101 et seq.

And if you meet the following criteria, a court may, in its discretion, vacate the conviction:

- ❖ There are no criminal charges pending against you for any crime other than prostitution in any court of this state, or another state, or in any federal court; or
- ❖ You have not been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction.
- ❖ You prove that it is more likely than not that the following occurred in your case (more than one section may apply):
 - ❖ If you were convicted for a prostitution offense as a result of being a victim of trafficking, RCW 9A.40.100, you must prove:
 - a. Someone harbored, transported, provided, obtained, bought, purchased, or received you.
 - b. That person acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause you to engage in a sexually explicit act or commercial sex act
 - c. Your prostitution conviction record resulted from that person's acts.
 - ❖ If you were convicted for a prostitution offense as a result of being a victim of promoting prostitution in the first degree, RCW 9A.88.070:,

If you were compelled by threat or force, you must prove;

 - a. You were compelled by threat or force to engage in prostitution.
 - b. The person knowingly used threat or force to compel you to engage in prostitution.
 - c. Your prostitution conviction record resulted from being compelled by threat or force by that person.

If you were compelled, you must prove;

 - a. You have a mental incapacity or developmental disability that renders you incapable of consent.
 - b. You were compelled to engage in prostitution.
 - c. The person knowingly compelled you to engage in prostitution.

- d. Your prostitution conviction record resulted from being compelled by that person.
- ❖ If you were convicted for a prostitution offense as a result of being a victim of promoting commercial sexual abuse of a minor, RCW 9.68A.101, you must prove:
 - a. You were under the age of 18 at the time of the prostitution offense.
 - b. While you were under the age of 18, someone:
 - caused or aided someone else to commit commercial sexual abuse of you; or,
 - asked for or got customers for commercial sexual abuse of you; or
 - provided persons or places for the purpose of commercial sexual abuse of you; or
 - operated or assisted in operating a house or enterprise for the purpose of commercial sexual abuse of you; or
 - did anything else designed to result in commercial sexual abuse of you; or
 - caused or aided someone else to commit a sexually explicit act with you; or,
 - asked for or got customers for a sexually explicit act with you; or
 - provided persons or places for the purpose of a sexually explicit act with you; or
 - did anything else designed to result in a sexually explicit act with you.
 - c. That person acted knowingly.
 - d. Your prostitution conviction record resulted from that person's actions.
- ❖ If you were convicted for a prostitution offense as a result of being a victim of trafficking under the trafficking victims protection act of 2000, 22 U.S.C. § 7101 et seq., you must prove either that:
 - a. You were induced by force, fraud, or coercion to engage in a commercial sex act and your prostitution conviction record is a result; or
 - b. You were induced to engage in a commercial sex act while you were under age 18 and your prostitution conviction record is a result.

If you can satisfy each of the requirements with respect to the conviction you are asking the court to vacate, your next step is to complete the form CrRLJ 09.0100, Motion and Declaration for Order Vacating Conviction. This form will allow the court to determine whether you are eligible to have your conviction vacated. If you are asking the court to vacate your prostitution conviction/s, and you were a victim of trafficking under state or federal law of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor, you must also complete form CrRLJ 09.0120, Prostitution Conviction Attachment, and attach it to the motion.

You may want to review the court file or the court docket for the offense you are asking the court to vacate to obtain information you need to fill out the form. Some counties may require you to obtain copies of your criminal history records and attach them to your motion. Read the local court rules or contact the clerk of the court where you will file your motion to find out if this requirement, or any other local requirement, applies to you. Once you have completed and signed the motion and declaration form and the attachment, if it applies, make at least two copies.

The next step is to schedule a hearing for the motion for order vacating conviction. To schedule a hearing, contact the clerk of the court where you were sentenced and ask for the date and time for the hearing. Then complete the form that court uses to schedule a hearing. Make at least two copies of the notice. File the original motion and declaration for order vacating conviction, prostitution conviction attachment, if it applies, and notice document. On the same day that you file those documents with the clerk of the court, you must also provide a copy of the documents to the prosecuting attorney's office that prosecuted you.

To notify the prosecuting attorney's office of the hearing, you may also use form CrRLJ 09.0150, Notice of Motion for Order Vacating Conviction. If you use this form, file the original with the clerk of the court. You must also provide a copy of the notice to the prosecuting attorney's office at the same time that you provide a copy of the motion, declaration, and attachment. Keep a copy of the notice, the motion, the declaration, and any attachments for your information.

The judge will hear your motion for order vacating conviction on the day scheduled for the hearing. You will need to be available to attend the hearing. If the motion is granted, the judge will complete an order vacating your conviction. The clerk of the court will send a copy of the order to the Washington State Patrol and to the local law enforcement agency, if any, which holds criminal history information about you.